

THE CRITICAL CHALLENGES FOR MIGRATION POLICY IN THE EUROPEAN UNION?

Abstract

The paper contains some of the most critical challenges for migration policy in the European Union, starting with a short overview on the literature and then with a briefly description of the asylum policy at the level of the European Union. A special analysis has been done on the following issues: assistance process to the member states, codecision procedures and conformity to international agreements. Based on these preliminary analysis on few current cases we found out some weaknesses of the migration policy process at the interinstitutional level in the European Union. In the last part of the paper there are some of our main conclusions.

Keywords: migration, interinstitutional cooperation, refugees, European Union.

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PROVOCĂRI MAJORE PENTRU POLITICA ÎN DOMENIUL MIGRAȚIEI ÎN UNIUNEA EUROPEANĂ

Armenia ANDRONICEANU

Professor Ph.D., Administration and Public Management Faculty, Bucharest Academy of Economic Studies

E-mail: Armenia.androniceanu@man.ase.ro

Mehari FISSEHA

Ph.D. Candidate, Administration and Public Management Faculty, Bucharest Academy of Economic Studies

E-mail: mehari17ie@yahoo.com

Rezumat

Lucrarea conține câteva dintre provocările majore ale politicii în domeniul migrației în Uniunea Europeană, începând cu a scurtă privire de ansamblu asupra literaturii de specialitate, urmată de o scurta descriere a politicii de acordare a azilului politic în cadrul Uniunii Europene. În continuare este prezentată o analiză specială a următoarelor subiecte: procesul de asistență acordată statelor membre, procedurile de luare a deciziilor și conformitatea cu acordurile internaționale. Pe baza acestor analize preliminare asupra unor cazuri recente, am identificat câteva slăbiciuni ale procesului politicilor în domeniul migrației la nivel interinstitutional în Uniunea Europeană. În ultima parte a lucrării sunt prezentate câteva dintre principalele noastre concluzii.

Cuvinte cheie: migrație, cooperare interinstituțională, refugiați, Uniunea Europeană.



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1. INTRODUCTION

The European Union (EU) faces three critical challenges for migration policy. First, although the EU is slowly developing a harmonized migration policy, many of the procedures and laws in the member states for granting asylum, refugee status and subsidiary protection remain erratic. Second, the EU must also develop a streamlined procedure to provide assistance to member states faced with the problem of housing and feeding an unexpected influx of refugees from troubled nations that border the EU. Third, the EU must also meet the challenge of ensuring that its migration policy and particularly its refugee conform to international standards and agreements.

Despite the humanitarian principles embodied in various treaty agreements, the European Union (EU) does not have an adequate harmonized policy for the treatment of undocumented migrants entering the territory of member states. According to the fundamental principles of the European Union before the Commission proposes new initiatives it assesses the potential economic, social and environmental consequences that they may have (Colesca, 2003, p. 51). Political and economic refugees often experience excessive hardship in detention centers with individual member states relying on national criteria when reviewing their applications for refugee status. As a result, the individual member states independently deal with issues created by undocumented migrants with no standardization to ensure that the treatment of refugees conforms to EU humanitarian doctrines. In the real life national parliaments and governments can formally express their reservation if they feel that it would be better to deal with an issue at national rather than EU level. (Profireoiu, 2006, p.123). In other cases along the policy process, the European Parliament has also the power to block a policy proposal if it disagrees with the Council. Even in this cases the decision-making procedure known as codecision means that the directly elected European Parliament has to approve EU legislation together with the Council. The Commission drafts and implements EU legislation. (Ciocoiu, 2011, p.37).

A recent example of the shortcomings of the EU migration policy is the influx into Italy of approximately 25,000 Tunisian and Libyan refugees fleeing political turmoil and civil strife in their homeland. Italy does not have sufficient facilities to provide for the needs of the refugees, with detention camps in the southern portion of the nation lacking basic shelter, food, and sanitation provisions (Nica and Popescu, 2010, p. 125). Italy has asked the European Commission (EC) for €85 million to provide for the needs of these refugees, but the issue has been deferred until the EU summit meeting in June. Because of the lack of an effective policy toward undocumented refugees at the EU level, member states cannot easily obtain assistance to contend with a sudden and unexpected migration. The humanitarian crisis created

by the migration of North Africans into the EU has also raised the issue of whether the Schengen regime of passport free travel within the EU should be suspended (Traynor, 2011).

The absence of an effective humanitarian policy of the EU toward internal refugees undermines the credibility of its foreign policy stance concerning protections for refugees. The member nations of the EU do not fully abide by international agreements such as the 1951 Convention Relating to the Status of Refugees. The foreign policy of the EU has normative objectives that attempt to influence other nations to adopt democratic and humanitarian principles (Joffe, 2008, p. 148). The failure of the EU to develop an integrated approach that conforms to international agreements for the treatment of undocumented refugees entering its territory reduces the ability to influence other nations to adopt democracy and to abide by international humanitarian principles.

2. FRAGMENTED ASLYM POLICY

Although the EU is in the process of building a common refugee and asylum policy, its progress has been very slow because of the provisions of the Amsterdam Treaty in which member states share competence over immigration matters with the EU. The EC and the European Parliament have generally adopted a liberal approach to asylum and refugee policy, seeking to harmonize the procedures and laws of the member states. The European Council, however, has historically adopted a more conservative position by attempting to ensure that individual member states can retain a high degree of control over migration and the granting of refugee status (Acosta, 2009, p.20). Because of the competing interests influencing EU institutions, the asylum and refugee component of migration policy is characterized by ambivalence between the humanitarian principles of the EU and the desire of member states to retain control over immigration.

In general, the policy of the EU and its individual member states distinguishes between an undocumented migrant entering the EU for purposes of employment and undocumented migrants entering the EU as refugees to flee from political or other types of oppression (Manole, 2006, p. 134). The EU has established a common asylum procedure for examining the applications of undocumented migrants entering the EU. Nonetheless each member state remains responsible for examining the applications of asylum seekers to determine if they qualify for refugee status or subsidiary protection under the laws and regulations of the individual member nations (Thielemann and El-Enany, 2009, p. 4). The laws concerning the rights of refugees vary among the member states of the EU with no standardization concerning the criteria for granting refugee status or the treatment of refugees while awaiting determination of status.

The asylum procedures of the EU and the laws of its individual member states are based on the principle of non-refoulement. This principle is intended to prevent the return of refugees to a nation in which the individual has a well founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or adherence to a political opinion (Alpopi and Florescu, 2006, p.109). In theory, the procedures and laws of the EU concerning refugees and the granting of asylum are intended to comply with Article 6 of the Treaty on European Union, which indicates that: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States." This article established the general policy objectives of respect for human rights in the laws, regulations, and administrative procedures of the member states of the EU.

Despite the theoretical foundation on human rights principles, the development of asylum and refugee policy in the EU has fostered increased restrictiveness based on the approach in which the laws and procedures of the most strict member nation has become the standard throughout the EU (Thielemann and El-Enany, 2009, p. 4). Several factors have contributed to the increased restrictiveness of asylum and refugee policy. The member states view restrictive measures to control migration into the EU as necessary to counterbalance internal market liberalization because a right of entry for a refugee into one state can eventually lead to a right of movement to other member states (Abaluta, 2006, p.35). Agreements such as the Amsterdam Treaty and the Dublin Convention have legitimized the ability of individual member states to adopt restrictive immigration measures based on security. At the same time, the more popular destination states such as Italy and France adopt more restrictive asylum and refugee laws that influence political actors in less popular destination states to adopt similar laws that are ostensibly intended to support harmonization. In this policy dynamic, the desire of some member states to control migration has a disproportionate influence on the policy of the entire EU, and creates the variance between migration and humanitarian policy objectives. The outcome is a territorially fragmented approach to migration policy and the treatment of asylum seekers and refugees (Burlacu and Jiroveanu, 2009, p.115).

An additional factor affecting immigration policy is Article 79 of the Treaty of Lisbon, which indicates that the development of a common immigration policy shall be developed by the European Parliament and the EC, and must follow the ordinary legislative procedure. As a result, any measure on immigration policy must be adopted by a qualified majority vote in the EC with joint legislative power granted to the European Parliament. In practice immigration decisions involve a substantial political component in which the domestic influences of constituencies in member states affect the decisions of the European Parliament and the EC.

Directive 2008/115/EC of the European Parliament and of the Council demonstrates the ambivalent approach attempting to balance humanitarian principles with immigration control. The Directive is popularly referred to as the Returns Directive because it attempts to harmonize the rule applicable to third-country nations in the EU that do not fulfill the conditions for entry, stay, or residence as established by the individual member nations. The Directive indicates that member states should use a fair and transparent procedure for the return of undocumented migrants to their home country. At the same time, the principle of mutual recognition embodied in the Directive indicates that practices and procedures of the member state with the most strict asylum granting and returns law is the minimum standard for all other nations in the EU. The Directive does not functionally establish a returns policy for the EU beyond a procedural fairness requirement.

Each member state that is the primary destinations for undocumented migration has also attempted to develop independent solutions to the asylum and refugee problem. Italy has attempted to outsource immigration control to Libya with proposals to build holding camps in that nation for undocumented migrants, but abandoned the approach because of human rights concerns. France and Spain have increased its cooperation with the security services of the states in North Africa to facilitate returns of undocumented migrants from the region (Joffe, 2008, p. 150). These independent approaches by the member states suggest that the EU has not established a harmonized policy towards refugees and asylum that fully conform to its stated objectives of protecting the human rights of all individuals.

3. ASSISTANCE TO MEMBER STATES

A significant challenge for the EU is developing a mechanism for the allocation of resources among member states for the support of undocumented individuals entering the EU. As demonstrated by the current refugee problem in Italy, individual member states do not have the physical resources to provide for thousands of refugees entering the state because of turmoil or conflict in a neighboring nation. At the current time, the EU has not developed a functional method for ensuring that a member state faced with a mass migration of refugees can provide for the immediate needs of the migrant population.

Article 78(3) of the Treaty of Lisbon states: "In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament." The language suggests that the EU views a mass migration of refugees as an emergency situation and will share the burden of caring for the refugees during the process of applying for asylum and refugee status (Pakozdy, 2010, p. 249). The Treaty, however, does not specify how the emergency assistance will be

provided or administered and the threshold criteria for determining that a situation constitutes an unusual influx of displaced persons. It merely assumes that the EC will take appropriate action after consulting with the European Parliament. At the same time, the member states from the northern and eastern regions of the EU are concerned that providing support for North African refugees will ultimately result in a grant of refugee status to a large number of individuals.

Article 78(2) of the Treaty of Lisbon further stipulates that European Parliament and the Council shall establish "standards concerning the conditions for the reception of applicants for asylum or subsidiary protection." This provision presumably involves ensuring that displaced persons entering the EU receive a minimum standard of support and care consistent with the humanitarian principles of the EU. The failure of the Italian government as well as the European Council to provide adequate facilities to house refugees from Tunisia and Libya that have entered the EU suggests that there is a substantial discrepancy between stated humanitarian principles and the practices of member states and the EU. At a minimum, the refugees are entitled to subsidiary protection as displaced persons and housed in humane conditions under the provisions of the Treaty of Lisbon.

The current situation with refugees from North Africa suggests that the EU faces a significant challenge with developing mechanisms to respond to large unexpected migrations of displaced persons. While some member states such as Malta and Cyprus have avoided the issue by closing their harbors to refugee boats from North Africa, this approach violates the human rights principles of the EU by exposing the refugees to the dangers of the sea. The nations such as Italy that have allowed the refugees to land in ports close to the North African coast have not received adequate support from other member states to cope with the crisis created by the large number of displaced persons in makeshift camps. The result is a violation of the human rights principles that are foundational for the EU.

4. CONFORMITY TO INTERNATIONAL AGREEMENTS

A significant challenge for EU migration policy is ensuring conformity between practices and the requirements of various international agreements concerning the treatment of refugees. The EU's treatment of refugees and displaced persons requiring temporary or subsidiary protection may be in violation of various international agreements including the Convention Relating to the Status of Refugees. The obvious and blatant infringements on the human rights of refugees and asylum seekers undermine the EU's position as an advocate of human rights norms in its foreign policy.

Article 177 of the Treaty Establishing the European Community states that: "Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of

law, and to that of respecting human rights and fundamental freedoms." The Article further stipulates that: "the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations." This provision indicates that the member states are bound by the international agreements concerning the treatment of refugees with the European Parliament and Council obliged to ensure that EU policy conforms to international agreements.

The preamble to the Convention Relating to the Status of Refugees affirms the principle that refugees enjoy the fundamental rights and freedoms as contained in the United Nations Charter and the Universal Declaration of Human Rights (Breen, 2008, p. 616). Given the broad context and language of human rights treaties and conventions, it would be incongruous to assume that asylum seekers that have not been formally granted refugee status have fewer rights and protections than refugees. The asylum seeker may be in an even more vulnerable position than a legally recognized refugee because they have greater uncertainty concerning their status and the possibility of return to their home nation.

Article 21 of the Convention Relating to the Status of Refugees affirms the right of all individuals to an adequate standard of living for their well-being. This right includes the right to food, clothing, housing, and medical care (Breen, 2008, p. 617). As a result, all undocumented individuals entering the territory of a member state of the EU seeking asylum are entitled to a minimum standard of living as a basic human right (Popescu and Corbos, 2009, p.117). Conversely, the failure to provide the basic standard of living constitutes a violation of the human rights norms espoused by the EU. In an emergency situation in which a large number of refugees enter a nation, the EU has a collective responsibility to provide the basic necessities.

The EU's ambivalent position and lack of direction in refugee policy impairs its ability to influence other nations particularly with the European Neighborhood Policy (Pacesila, 2011, p. 56). This policy is intended to export the norms, practices and policies to nations neighboring the EU to reduce indirect security threats such as migration and to promote democracy and economic development (Wood, 2009, p. 114). The policy is based on the assumption that the promotion of fundamental EU values will establish the EU as a normative power in the Mediterranean and Eastern Europe regions by encouraging other nations to adopt similar norms in exchange for access to EU markets. The lack of an effective and coordinated internal policy towards refugees entering the EU, however, conveys an implicit message that the human rights principles are subject to compromise when they conflict with political or economic agendas of the member states. In effect, the EU's failure to comply with its human rights norms as well as international standards in the treatment of refugees reduces the effectiveness of

foreign policy initiatives intended to reduce the incidence of undocumented migrants entering the territory of the member states.

5. CONCLUSION

The primary challenge for the EU is to develop a migration policy to ensure that refugees and asylum seekers receive fair and humane treatment that conforms to internal EU human rights agreements as well as treaty obligations of the member states.

To meet this challenge, the EU has to address the flaws in its current policy approach created by allowing each member state to develop and implement different refugee laws. The current EU approach requires only that the member states use a fair and transparent procedure when applying laws and regulations related to the granting of asylum and refugee status.

The European Council and the European Parliament also have to develop mechanisms that are not dependant on political processes to deal with a sudden and unexpected influx of refugees seeking asylum in a member nation. The recent delays in providing substantive assistance to Italy to contend with Tunisian and Libyan refugees leading to significant hardships and violations of human rights demonstrates the need for policy reforms.

By developing an integrated and consistent migration and refugee policy that is standard in all member nations, the EU can more effectively demonstrate its commitment to its internal human rights principles as well as the commitment of member states to upholding the principles of international human rights and refugee conventions and treaties. The long-term benefit to the EU from a standardized and integrated migration policy is greater support for implementing the normative components of its foreign policy that is intended to influence neighboring nations to adopt democracy and human rights principles.

REFERENCES

- Abaluta, O.M. (2006). "Researches on the utilization of IT indicators in the management of local public services", *Theoretical and Empirical Researches in Urban Management*, Vol. 1, Issue no.1, pp.32-41.
- Alpopi, C., Florescu, M. (2006). "The use of regenerable energy", *Administration and Public Management Review*, Issue no.6, pp.108-112.
- Burlacu, S., Jiroveanu, D. (2009). "Characteristics of knowledge-based economy and new technologies in education", *Administration and Public Management Review*, Issue no.16, pp.114-119.
- Acosta, D. (2009). "The good, the bad, and the ugly in EU migration law: Is the EU Parliament becoming bad and ugly?", *European Journal of Migration and Law*, vol. 11, pp. 19-39.

- Breen, C. (2008). "The policy of direct provision in Ireland: A violation of the asylum seekers' right to adequate standard of housing", *International Journal of Refugee Law*, Vol. 20, no. 4, pp. 611-636.
- Ciociu, N.C. (2011). "Integrating digital economy and green economy: opportunities for sustainable development", *Theoretical and Empirical Researches in Urban Management*, Vol. 6, Issue no.1, pp. 33-43.
- Colesca, S.E. (2003). "Informational Technologies and the Citizen-Public Authority Relation", *Administration and Public Management Review*, Issue no.1. pp.48-61.
- Joffe, G. (2008). "The European Union, democracy, and counter-terrorism in the Magreb", *Journal of Common Market Studies*, Vol. 46, no. 1, pp. 147-171.
- Manole, C. (2006). "The architecture of the forming system in public administration", *Administration and Public Management Review*, Issue no. 6, pp.131-138.
- Nica, E., Popescu, Gh. (2010). "Emphasis of interconnection between the public system of granting salary and incentives and the civil servants performance indicators", *Administration and Public Management Review*, Issue no. 15, pp.121-127.
- Pacesila, M. (2011). "Testing the validity of the model for improving the public policy making process in Romania", *Management Research and Practice*, Vol 3, Issue no.2, pp.46-73.
- Pakozdy, C. (2010). "Asylum, refugees and minorities", in Asztalos, S. & Pakozdy, C. (Eds.) *Public policy of the European Union*, pp. 246-256.
- Popescu I.R., Corbos, R. (2009). "The Role of Urban Brand Measuring Tools in Grounding the Strategic Actions for Promoting Cities", *Administration and Public Management Review*, Issue no. 13, pp. 116-142.
- Profiroiu, M., Profiroiu, A. (2006). "General framework regarding Romanian civil servants development", *Administration and Public Management Review*, Issue no.6, pp. 121-125.
- Thielemann, E. and El-Enany, N. (2009). "Beyond fortress Europe: How European cooperation strengthens refugee protection", in *European Union Studies Eleventh Biannual Conference*, 23-25 April, Los Angeles.
- Traynor, I. (2011). "France and Italy in call to close EU borders in wake of Arab protests". *Guardian* (April 27). Retrieved from: <http://www.guardian.co.uk/world/2011/apr/26/eu-borders-arab-protests>.
- Wood, S. (2009). "The European Union: A normative or a normal Power?", *European Foreign Affairs Review*, Vol. 14, pp. 113-128.